

Editor's note: Reconsideration denied by order dated Oct. 27, 1982

GEORGE L. HAWKINS
WALLACE G. HEATH

IBLA 82-813

Decided August 31, 1982

Appeal from the decision of the Idaho State Office of the Bureau of Land Management, holding the Huntz Gulch Bar Placer Claim to be null and void. I MC 24984.

Affirmed as modified.

1. Mining Claims: Powersite Lands--Mining Claims: Withdrawn
Land--Mining Claims Rights Restoration Act-- Powersite
Lands--Withdrawals and Reservations: Powersites

Although land reserved for powersite purposes by a 1910 Executive Order issued pursuant to the "Pickett Act" of June 25, 1910, remained open to the location of mining claims for metalliferous minerals, that Act was superseded by sec. 24 of the Federal Power Act of June 10, 1920, which closed such lands to all mineral location until enactment of the Mining Claim Rights Restoration Act of Aug. 11, 1955.

2. Mining Claims: Powersite Lands--Mining Claims: Withdrawn
Land--Mining Claims Rights Restoration Act-- Powersite
Lands--Withdrawals and Reservations: Powersites

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

3. Administrative Authority: Estoppel--Federal Employees and Officers:
Authority to Bind Government

The erroneous opinion or information of a Federal officer, agent or employee cannot operate to vest any right not authorized by law.

APPEARANCES: Wallace G. Heath and George L. Hawkins, pro sese.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

By its decision dated March 29, 1982, the Idaho State Office of the Bureau of Land Management (BLM), declared the Huntz Gulch Bar Placer Mining Claim null and void ab initio. The reason was stated in the decision as follows:

The land involved was withdrawn from mineral entry by Temporary Order dated May 29, 1909, and approved by Executive Order dated July 2, 1910.

Since the subject claim was located February 15, 1936, it was located after the land was closed to mineral entry. Therefore, the Huntz Gulch Bar Placer mining claim is invalid and declared null and void ab initio.

The nature of the withdrawal was not specified in the decision, nor was the Executive Order otherwise identified. Moreover, it is not reflected in the land status documents which are included in the case records. 1/

The claimants (appellants), however, apparently identified the withdrawal as being for a powersite, and offer the following contentions in their statement of reasons for appeal:

1. While the claim was originally filed on a power withdrawal on March 22, 1925, and while subsequent location by another (Casey) in 1936 was made, the passage of PL 359 in 1955 resulted in the refiling of the claim by Lester Turner on March 18, 1957. The latter law superceded the power withdrawal order, and therefore, the claim was valid and legal after that time. (He had also filed on Sept. 29, 1956).

2. [T]he right-of-way deed was granted to the USA by Theodore Holte across Huntz Gulch Bar Claim in March 19, 1938. Therefore, the validity of the claim was apparent to US federal officials.

1/ It has since been ascertained that the reference was to Executive Order No. 5937, which established Power Site Reserve 8, pursuant to the "Pickett Act" of June 25, 1910, 43 U.S.C. §§ 141, 142 (1976), which left the land open to the location of mining claims for metalliferous minerals.

3. The Huntz Gulch Bar Claim was amended in 1981 to conform to legal subdivision parameters, a policy advocated in written form on BLM and other federal documents. This also required an order to patent the claim later. The owners relied on the policy of the federal government when they made this amendment. Therefore the government should be estopped from trying to invalidate the claim on this basis. The government did not acknowledge this as a new claim, but only as an amendment, which is substantiated by the fact that the same claim number and name was assigned to it.

* * * * *

The amendment in 1981 was done in reliance on the written information promulgated by the US Government which strongly recommends that claims be filed or amended to meet legal subdivision parameters.

[1] Although land reserved for powersite purposes by a 1910 Executive Order issued pursuant to the "Pickett Act" of June 25, 1910 (supra, at n. 1), remained open to the location of mining claims for metalliferous minerals, that Act was superseded by section 24 of the Federal Power Act of June 10, 1920, 16 U.S.C. § 818 (1976), which closed such lands to all mineral location until enactment of the Mining Claims Rights Restoration Act of August 11, 1955, infra.

The precise question of whether mining locations for metalliferous minerals could be made after June 10, 1920, on lands previously withdrawn for powersites under the "Pickett Act" was considered in the case of Coeur d'Alene Crescent Mining Co., 51 I.D. 531, 537 (1931). It was there held that the Act of June 25, 1910, had been superseded by the Federal Power Act to the extent that the former authorized mining locations for metalliferous minerals on lands withdrawn as powersites. See also Addie Gibson Burton, A-25457 (June 14, 1949); John Roberts, 55 I.D. 430, 433 (1935).

Therefore, no mining claim could have been lawfully located on the subject land between June 10, 1920, and August 11, 1955.

[2] Public Law 84-359, 30 U.S.C. § 621 (1976), known as the "Mining Claims Rights Restoration Act of 1955," had as its purpose "To permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development * * *." After enactment of the statute on August 11, 1955, such lands were open to mineral location (with certain exceptions). However, mining claims which were located prior to that date after the land had been closed to mineral entry were simply null and void from their inception and the Mining Claims Rights Restoration Act, supra, did not operate retroactively to validate claims which were void when located. John C. Farrell, 55 IBLA 42 (1981); Day Mines, Inc., 65 I.D. 145 (1958). Appellant's primary reliance is on the claim located as the Huntz Gulch Bar Placer Mining Claim by Clarence C. Casey on February 15, 1936, because it is the notice of that location which was recorded with BLM

pursuant to the requirements of 43 U.S.C. § 1744 (1976). ^{2/} That location was clearly void when made, and since it was not given life by the enactment of P.L. 84-359, BLM's decision was clearly correct.

[3] The fact that someone in the Federal establishment accepted a right-of-way across the claim could not serve to enhance the legal status of the claim. As has been held so often, the erroneous opinion or information of a Federal officer, agent, or employee cannot operate to vest any right not authorized by law. Palmyra Mines Inc., 53 IBLA 89 (1981).

As the 1936 location by Casey was null and void from the beginning, the amendment of that location in 1981 by appellants could have no effect. Moreover the "amended" location cannot be regarded as a re-location (new location), as the record shows that the land in sec. 2 within one-quarter mile of the Salmon River has been closed to entry under the mining laws for potential addition to the Wild and Scenic Rivers System since October 2, 1968. 16 U.S.C. §§ 1271, 1280 (1976); Cf. Walter B. Freeman, 25 IBLA 150 (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Edward W. Stuebing
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

^{2/} Although appellants allege that locations of this land were made by one Lester Turner in 1956 and 1957, there is nothing in the record to show that these locations were recorded with BLM as required by the statute, nor is there any allegation that appellants are claiming the rights initiated by Turner.

